

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lance H. Olson (077634)/Deborah B. Caplan (196606)/Benjamin N. Gevercer (322079) OLSON HAGEL & FISHBURN LLP 555 Capitol Mall, Suite 400 Sacramento, CA 95814 TELEPHONE NO.: (916) 442-2952 FAX NO.: (916) 442-1280 ATTORNEY FOR (Name): Petitioner		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1130 O Street MAILING ADDRESS: Same CITY AND ZIP CODE: Fresno, CA 93721-2220 BRANCH NAME: B.F. Sisk Courthouse		
CASE NAME: Fresno Building Healthy Communities v. City of Fresno, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
CASE NUMBER:		JUDGE:
DEPT:		

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|--|---|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input checked="" type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (<i>not specified above</i>) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (<i>not specified above</i>) (43) |
|--|---|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (*check all that apply*): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (*specify*): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: January 30, 2019
 Deborah B. Caplan

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CITY OF FRESNO,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

FRESNO BUILDING HEALTHY COMMUNITIES,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): FRESNO SUPERIOR COURT

1130 O Street
Fresno, CA 93721-2220

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Deborah B. Caplan (196606), Olson Hagel & Fishburn LLP, 555 Capitol Mall, # 400, Sacramento, CA 95814

DATE:
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

LANCE H. OLSON [SBN 077634]
DEBORAH B. CAPLAN [SBN 196606]
BENJAMIN N. GEVERCER [SBN 322079]
OLSON HAGEL & FISHBURN LLP
555 Capitol Mall, Suite 400
Sacramento, California 95814
Telephone: (916) 442-2952
Facsimile: (916) 442-1280

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

FRESNO BUILDING HEALTHY
COMMUNITIES,

Petitioner,

v.

CITY OF FRESNO,

Respondent.

CASE NO.:

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

(CCP §§ 1085, 1060)

Petitioner FRESNO BUILDING HEALTHY COMMUNITIES, by this verified petition, requests that this Court issue a writ of mandate and related relief and alleges as follows:

INTRODUCTION

On November 6, 2018, the voters of the City of Fresno voted to approve Measure P by 52.62%. Measure P would impose a 3/8 percent sales tax in the City to be used to improve park safety and accessibility for persons with disabilities, update and maintain playgrounds and restrooms, provide youth and veteran job training, improve after-school, arts and recreation programs, beautify roadways, and create parks and trails in neighborhoods without current access.

The City determined that Measure P “failed” because it received a simple majority and had not received approval of two-thirds of the voters. Although this has been the conventional view for many years, in 2017, the California Supreme Court provided clarification on what has previously been the

1 conventional interpretation, in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. In
2 that case, the Court concluded that the restrictions on tax measures that were imposed on a “local
3 government” in subdivision (b) of section 2 of article XIII C [no “local government” shall impose a
4 general tax unless it is approved by a majority of voters and the election is held at a regularly scheduled
5 general election] did *not* apply to tax measures proposed by the electorate acting through the initiative
6 process, reasoning that the citizens’ right to act by initiative cannot be restricted without “unambiguous
7 indications of the [restricting] provision’s purpose.”

8 The two-thirds vote requirement is found in subdivision (d) of section 2 of article XIII C [no
9 “local government” may impose a special tax unless submitted to voters and approved by a two-thirds
10 vote]. Like the measure in *Upland*, Measure P was proposed by voter initiative rather than the City
11 Council. As with subdivision (b), there is no indication in Proposition 218 (which proposed both
12 provisions) that subdivision (d) was intended to restrict the rights of voters acting by initiative. Just as
13 the reference to the “local government” in subdivision (b) refers only to measures proposed by the
14 governing body, subdivision (d) refers only to measures proposed by the governing body and has no
15 application to a measure like Measure P which was proposed by initiative.

16 This action is brought to require the City to acknowledge that Measure P was properly enacted
17 by a majority of voters in the City of Fresno and to take steps to contract with the State for
18 implementation of the tax.

19 **PARTIES**
20

21 1. Petitioner FRESNO BUILDING HEALTHY COMMUNITIES (“FBHC”) is an
22 organization incorporated under section 501(c)(3) of the Internal Revenue Code. It was founded by
23 residents of Fresno to foster and encourage thriving communities where all children and families can
24 live healthy, safe, and productive lives. It is governed by a Board of Directors which has authorized
25 this action. FBHC brings together residents, young people and community-based organizations to
26 devise and implement innovative solutions to some of the community’s most pressing challenges.
27 FBHC guides and supports multi-sector, diverse stakeholder collaboration in order to carry out the
28 vision and plan for a healthy community. Fresno BHC has established over 30 non-profit and faith-

1 based partnerships, affecting over 97,000 lives in Fresno, California, and it has put forth an expansive
2 and inclusive vision for healthy communities that includes all Fresnoans. One of the key community
3 priorities stated over the years by residents living in Fresno, California is ensuring access to clean, safe
4 neighborhood parks for everyone. Quality parks improve health, the environment, and boost our
5 economy -- contributing to the overall wellness of individuals and the community. Ensuring access to
6 quality parks is therefore central to achieving the mission of FBHC. Measure P was put forth by
7 citizens to address the challenges in the Fresno park system and ensure access to quality parks
8 throughout the city. In addition, FBHC is guided by the belief that a functioning democracy must
9 recognize the voices of the many, so FBHC works to support an informed, engaged, and active
10 citizenry; protecting the rights of voters in Fresno furthers FBHC's work in protecting and promoting
11 long-lasting civic engagement. FBHC supported the passage of Measure P in the Fresno November,
12 2018 election and is committed to the proper enforcement and implementation of that Measure.

13 2. Respondent CITY OF FRESNO is a California municipal corporation operating under a
14 city charter adopted in accordance with section 3 of article XI of the State Constitution.

15 JURISDICTION

16 3. This Court has jurisdiction over Petitioner's request for writ of mandate pursuant to Code
17 of Civil Procedure section 1085.

18 4. This Court has jurisdiction over Petitioner's request for declaratory relief pursuant to
19 Code of Civil Procedure section 1060.

20 FACTUAL ALLEGATIONS

21 5. In spring, 2018, a citizen led initiative petition was circulated in the City of Fresno that
22 would allow City voters to adopt the "Fresno Clean and Safe Neighborhoods Parks Transactions and
23 Use Tax Ordinance," later designated as "Measure P."

24 6. Measure P asked voters to approve a 3/8 percent transactions and use tax in order to
25 improve park safety; improve accessibility for persons with disabilities; update and maintain
26 playgrounds and restrooms; provide youth and veteran job training; improve after-school, arts and
27 recreation programs; beautify roadways; and create parks and trails in neighborhoods without current
28 access. The measure specified how the funds would be allocated among those purposes and provided

1 for oversight and accountability.

2 7. On or about August 9, 2018, the City Council received a certification from the City Clerk
3 that the petition had sufficient signatures to require either adoption by the City Council or submission of
4 the measure to voters. The City Council voted to submit the measure to the voters at the November 6,
5 2018 General Election in the City of Fresno.

6 8. On December 13, 2018, the City Council received the statement of votes cast at the
7 November 6 election from the County Registrar of Voters. The statement of votes indicated that
8 Measure P was approved by 52.62 percent of voters voting in the election. The City nonetheless
9 adopted a resolution which stated that Measure P “received less than two-thirds of the votes cast
10 citywide, and failed.”

11 9. Upon information and belief, the City Council’s conclusion that Measure P required
12 approval by two-thirds of voters (and therefore failed) is based on its construction of article XIIC,
13 section 2, subdivision (d) of the State Constitution, which states, “[n]o *local government* may impose,
14 extend, or increase any special tax unless and until that tax is submitted to the electorate and approved
15 by a two-thirds vote.” (Cal. Const., art. XIIC, § 2(d), emphasis added.)

16 10. In *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, the California
17 Supreme Court interpreted the term “local government” in subdivision (b) of section 2 of article XIIC,
18 which provides that no “local government” shall impose a general tax unless it is approved by a majority
19 of voters and the election is held at a regularly scheduled general election. Although the initiative in that
20 case received enough signatures to trigger a special election, the City submitted it to voters at the next
21 general election in reliance on subdivision (b) of section 2 of article XIIC. The Supreme Court
22 concluded that the general election requirement in section 2(b) did *not* apply because the phrase “local
23 government” applied only to tax measures proposed by local government officials and did not apply to
24 measures proposed by the electorate through the initiative process. In reaching its conclusion, the Court
25 relied on previous case law holding that the right to act by initiative cannot be restricted without
26 “unambiguous indications of the [restricting] provision’s purpose.” (*Id.* at 945-46 [“Unless a provision
27 explicitly constrains the initiative power or otherwise provides a similarly clear indication that its
28 purpose includes constraining the voter’s initiative power, we will not construe provisions as imposing

1 such limitations.”].)

2 11. Although the *Upland* Court did not directly determine whether the two-thirds vote
3 requirement of subdivision (d) would also be limited to tax measures proposed by the governing body,
4 both subdivision (b) and subdivision (d) use the exact same term, “local government” – the phrase
5 specifically construed by the Court to apply only to measures imposed by the local governing body and
6 to exclude voters acting by initiative. In addition, both provisions were enacted by Proposition 218.
7 Since the Court found insufficient evidence of intent in the ballot materials to limit the voters’ rights to
8 act by initiative in subdivision (b), the same would be true of subdivision (d).

9 12. The *Upland* Court’s reasoning indicates that the two-thirds vote requirement for special
10 taxes only applies to taxes proposed by local officials and not to taxes proposed by a voter initiative such
11 as Measure P.

12 13. Measure P was not proposed by the local governing body, i.e., the Fresno City Council.
13 Rather, it was imposed by the citizens of Fresno, acting through the initiative process.

14 14. It is uncontested that Measure P was adopted by a majority vote. The Elections Code
15 provides that initiatives are adopted if approved by a majority of voters. (Elec. Code, § 9217.)

16 15. The Fresno City Charter incorporates by reference the provisions of the State Elections
17 Code. (Fresno City Charter, § 1403.)

18 16. If a transactions and use tax ordinance (such as Measure P) is adopted by voters, the
19 Revenue and Tax Code directs the City to enter into a contract with the California Department of Tax
20 and Fee Administration (duties formerly performed by the Board of Equalization) “to perform all
21 functions incident to the administration and operation of the ordinance.” (Rev. & Tax Code, § 7270.)

22 17. On or about January 23, 2019, FBHC sent a letter to the City asking it to declare Measure
23 P legally enacted and to take steps to negotiate a contract with the California Department of Tax and Fee
24 Administration for the administration and operation of the transactions and use tax approved in Measure
25 P.

26 18. Upon information and belief, the City Council will not take action to certify the passage
27 of Measure P or seek to contract with the California Department of Tax and Fee Administration, without
28 a court order declaring Measure P to have passed.

1 **FIRST CAUSE OF ACTION**

2 (Writ of Mandate)

3 19. Petitioner re-alleges and incorporates herein by reference paragraphs 1 through 18,
4 inclusive, of the Petition as though fully set forth herein.

5 20. Respondent has a ministerial duty to declare Measure P was approved by more than 52%
6 of the voters of the City of Fresno voting in the November 6, 2018 General Election and that Measure P
7 was therefore legally approved and validly enacted.

8 21. Respondent has a ministerial duty within the meaning of Code of Civil Procedure section
9 1085 to take steps to enter into a contract with the California Department of Tax and Fee
10 Administration.

11 22. Absent a judicial order directing Respondent to take these actions, upon information and
12 belief, Respondent has indicated its unwillingness to take such actions.

13 23. Petitioner has a beneficial interest in ensuring that the rights of the voters of the City of
14 Fresno are enforced and that the terms of Measure P are implemented.

15 24. Petitioner has no other plain, speedy or adequate remedy in the ordinary course of law.

16 **SECOND CAUSE OF ACTION**

17 (Declaratory Relief)

18 25. Petitioner re-alleges and incorporates herein by reference paragraphs 1 through 24,
19 inclusive, of the Petition as though fully set forth herein.

20 26. An actual, present controversy exists as to whether Measure P can be enacted and
21 implemented after approval by a majority of the voters in the November, 2018 General Election, as
22 Petitioner asserts that Measure P was legally enacted and should be implemented and Respondent has
23 indicated that Measure P was not legally enacted and has refused to take the necessary steps to
24 implement it.

25 27. A judicial declaration pursuant to Code of Civil Procedure section 1060 is necessary and
26 appropriate at this time in order to determine the rights of the parties and in particular whether Measure
27 P was validly enacted and should be implemented as provided by law.

28 ///

PRAYER FOR RELIEF


Wherefore, Petitioner prays for relief as follows:

1. That this Court issue a peremptory writ of mandate directing Respondent to declare Measure P legally approved by voters and take steps to implement it as provided by law;
2. That this Court declare that Measure P was validly enacted upon approval by a majority of voters at the November 6, 2018 General Election in the City of Fresno and that Respondent has a legal obligation to implement that Measure, including execution of a contract with the California Department of Tax and Fee Administration;
3. For such other and further relief as the Court deems proper, including an award of reasonable attorney fees under Code of Civil Procedure section 1021.5.

Dated: January 30, 2019

Respectfully submitted,

OLSON HAGEL & FISHBURN LLP

By: 
DEBORAH B. CAPLAN
Attorneys for Petitioner

VERIFICATION

I, Sandra Celedon, am the President and Chief Executive Officer of Fresno Building Healthy Communities and am authorized to make this declaration on its behalf. I hereby certify that I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF and the contents thereof are true and accurate to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 30, 2019

A handwritten signature in black ink, appearing to read 'S. Celedon', is written over a horizontal line.

SANDRA CELEDON